

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
2.59.1501 pertaining to definitions and ARM	)	AND ADOPTION
2.59.1502 pertaining to application	)	
procedure required to engage in deposit	)	
lending, and the adoption of NEW RULE I	)	
pertaining to reports, NEW RULE II	)	
pertaining to schedule of charges, NEW	)	
RULE III pertaining to employees' character	)	
and fitness, NEW RULE IV pertaining to	)	
electronic deductions, and NEW RULE V	)	
pertaining to income verification	)	

TO: All Concerned Persons

1. On February 23, 2006, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-369 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 375 of the 2006 Montana Administrative Register, issue number 4. On March 9, 2006, the division published MAR Notice No. 2-2-370 at page 614 of the 2006 Montana Administrative Register, issue number 5, to amend the reasonable necessity statement.

2. After consideration of the comments received, the Division of Banking and Financial Institutions has amended ARM 2.59.1502 exactly as proposed and adopted new rules II (2.59.1508) and V (2.59.1513) exactly as proposed.

3. The division has adopted the following rules as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

2.59.1501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) through (3) remain as proposed.

(4) "Manager" means a person employed by a deferred deposit lender as the person responsible for operating the business at the location where the person is employed.

(5) (4) "Monthly net income" means gross salary minus taxes and voluntary deductions. This term includes income from public assistance, child support, alimony, unemployment insurance payments, and workers' compensation, and other verifiable sources.

AUTH: 31-1-702, MCA

IMP: 31-1-705, 31-1-722, MCA

RULE I (2.59.1507) REPORTS (1) The following must be reported to the department:

- (a) any instances of theft from the deferred deposit loan business ~~or missing funds~~ within ten days of ~~each occurrence~~ discovery of the theft;
- (b) and (c) remain as proposed.

AUTH: 31-1-702, MCA

IMP: 31-1-702, MCA

NEW RULE III (2.59.1510) EMPLOYEES' CHARACTER AND FITNESS

(1) Licensees are responsible for conducting appropriate background checks ~~on all applicants for employment~~ new employees hired after July 1, 2006. At a minimum, each licensee shall:

- (a) and (b) remain as proposed.
- (c) within ten days of start of employment, request a Montana criminal records check from the Montana Department of Justice.

(2) and (3) remain as proposed.

(4) A criminal records check conducted by another agency or private company may be used by licensees as a substitute for the records check by the Montana Department of Justice as long as the information provided by the substitute records check contains the same information as the check conducted by the Montana Department of Justice.

AUTH: 31-1-702, MCA

IMP: 31-1-705, MCA

NEW RULE IV (2.59.1512) ELECTRONIC DEDUCTIONS (1) and (2) remain as proposed.

(3) An electronic deduction for nonsufficient funds authorized by the borrower under (1) may not be presented to the borrower's financial institution until the licensee has presented the check for payment ~~at least twice~~.

AUTH: 31-1-702, MCA

IMP: 31-1-703, MCA

4. The following comments were received and appear with the division's responses:

Comment 1: A comment was received in regard to ARM 2.59.1501(3) opposing the use of the phrase "other financial related crimes and judgments" in the definition of fraud or other dishonest financial dealings.

Response 1: The division recognizes the concern but believes that the statute and rule are sufficiently clear that only criminal behavior or civil judgments that show financial dishonesty such as fraud are subject to the restrictions on the statute. Divorces or other civil money judgments that do not pertain to fraudulent acts are not grounds for rejection or termination of employment.

Comment 2: A comment was received in regard to ARM 2.59.1501(4) stating that the definition of "monthly net income" was too restrictive.

Response 2: The division believes that monthly income must be determined only from sources that can be verified. Therefore, the division will amend the rule to include "other verifiable sources".

Comment 3: A comment was received that the term "managers" as used in the rules should be clarified to include only the employee in charge of the licensed location.

Response 3: The division agrees and amends ARM 2.59.1501 accordingly.

Comment 4: Comments were received in regard to New Rule I stating that reporting "missing funds" is onerous and over burdensome because cash drawers are short by a few pennies.

Response 4: The division agrees and amends New Rule I accordingly.

Comment 5: Comments were received in regard to New Rule I and whether ten days was too short of a reporting time for all the occurrences.

Response 5: The division agrees with the comments as far the reporting requirements of theft and amended the rule to reflect from time of discovery. The division does not agree with the comment as far as other occurrences are concerned. The division believes that ten days is a sufficient duration of time to provide notification of a change in managers or to submit officer questionnaires.

Comment 6: A comment was received in regard to New Rule I stating that some instances of missing funds are not associated with the deferred deposit business and that the reporting requirement should be only for theft of funds from the deferred deposit loan business.

Response 6: The division agrees and amends New Rule I accordingly.

Comment 7: A comment was received in regard to New Rule II stating that the phrase "easily readable" is ambiguous and should be replaced with a specific font size requirement.

Response 7: The division disagrees and believes that the phrase "easily readable" is sufficiently clear.

Comment 8: A comment was received in regard to New Rule II stating that a schedule of charges is unnecessary because the borrower already receives full disclosures before signing the agreement plus receives the pamphlet that outlines basics of the transaction.

Response 8: The division disagrees. The schedule of charges is necessary to allow the consumers to easily determine the cost of a deferred deposit loan.

Comment 9: Comments were received in regard to New Rule III stating that the verification of prior employment is problematic due to a legal climate that makes previous employers reluctant to discuss an applicant's employment. A reasonable attempt to verify and document should be the standard.

Response 9: The division recognizes that absolute verification of prior employment may be difficult. New Rule III contemplates a process where the licensee makes a good faith effort to verify employees' prior employment. In cases where the prior employer will not divulge information, the licensee has satisfied this provision by attempting to verify.

Comment 10: A comment was received in regard to New Rule III requesting that a background check conducted by a private company may be more efficient since it would be national in scope.

Response 10: The division recognizes that in some cases private companies may be more efficient at background checks. Therefore, the division amends the rule accordingly.

Comment 11: Comments were received in regard to New Rule III stating that as the rule is currently written, a licensee would have to do background checks on "all applicants" not just the applicants that were going to be offered employment.

Response 11: The division does not contemplate that licensees will have to conduct background checks on current employees and has clarified New Rule III accordingly.

Comment 12: A comment was received in regard to New Rule III in that the rule is silent as to whether employee records must be stored on location thus violating federal privacy laws.

Response 12: The division will require that employee records be stored and safeguarded according to the company's standard operating procedure for those types of records.

Comment 13: Comments were received in regard to New Rule III requesting that all employees that are hired before this rule takes effect not be subject to the rule.

Response 13: The division agrees and has amended New Rule III accordingly.

Comment 14: Comments were received in regard to New Rule IV stating that the requirements may be in conflict with federal law.

Response 14: The division disagrees. New Rule IV does not conflict with federal law and is in compliance with the National Automated Clearing House Association rules.

Comment 15: Comments were received in regard to New Rule IV stating that the requirements may have the adverse effect of increasing bank fees for the borrowers.

Response 15: The division recognizes that there may be an adverse financial impact for the borrowers. Therefore the division amends New Rule IV accordingly.

Comment 16: Comments were received in regard to New Rule V stating that requiring income verification for each loan was inappropriate. At this time licensees verify employment every six months, which is adequate. Requiring verification every time a loan is issued is burdensome on both the borrower and the industry.

Response 16: The division disagrees. Licensees may not issue a loan that is unconscionable. A loan may be unconscionable if it is more than 25% of a borrower's monthly income. Without verifying income for each loan, there is no way of determining whether a loan may be unconscionable.

By: /s/ Janet R. Kelly  
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Certified to the Secretary of State May 22, 2006.